

Report of: Executive Member for Housing and Development

Meeting of:	Date	Ward(s)
Executive	8 December 2016	All

Non-exempt

SUBJECT: Adoption of Planning Obligations (Section 106) Supplementary Planning Document (SPD)

1. Synopsis

- 1.1 Planning obligations are used as part of the planning application process to address specific planning issues and impacts arising from a development proposal. They are secured in legal agreements under Section 106 of the Town and Country Planning Act 1990 and their purpose is to make a development acceptable that would otherwise be unacceptable in planning terms.
- 1.2 The Council's current adopted version of the Planning Obligations (Section 106) SPD was finalised and adopted in 2013. It therefore pre-dates the 2016 London Plan, Islington's Community Infrastructure Levy (CIL) and the adoption of a number of Council Supplementary Planning Documents.
- 1.3 The purpose of this report is to recommend adoption of the Planning Obligations (Section 106) SPD 2016 following public consultation on a draft version, and to outline its content and key changes made following consultation.
- 1.4 This new version of the SPD will help to strengthen the Council's S106 negotiating position during the planning application process, and will clarify the Council's approach to planning obligations and the Community Infrastructure Levy in line with CIL Regulations 2010 (as amended).
- 1.5 The Planning Obligations (Section 106) SPD 2016 outlines national, regional and local policies relating to planning obligations, and provide guidance on the procedure for agreeing planning obligations following adoption of the Islington's CIL and Development Viability SPD.

2. Recommendations

- 2.1 To note the summary of comments received during public consultation on the draft Planning Obligations (Section 106) SPD (see Appendix 2 for Consultation Statement), the Council's responses and proposed

changes to the SPD.

- 2.2 To agree to formally adopt the Planning Obligations (Section 106) SPD (as attached at Appendix 1).

3. Background

- 3.1 Planning obligations are an essential tool for the Council to ensure that development remains sustainable within the constraints of a diverse and densely-developed borough, thus helping to deliver the Council's policies.
- 3.2 Section 106 of the Town and Country Planning Act 1990 provides the legal means by which planning obligations are secured, allowing the Council to require obligations to make development acceptable in planning terms which would otherwise be unacceptable.
- 3.3 The Islington's Local Plan (Core Strategy and two of three associated Development Plan Documents (DPDs)) makes numerous mentions of the use of planning obligations to ensure sustainable development, as does the London Plan (2016). Since the adoption of the previous version of the SPD in 2013, the following additional SPDs have been adopted by the Council: Basement Development, Cally Plan, Development Viability, Inclusive Design in Islington, Location and Concentration of Uses, and Preventing Wasted Housing Supply. The Council has also produced a draft Islington Urban Design Guide. The adoption of a Development Viability SPD is particularly relevant, as it supersedes previous Council guidance on the subject of viability, as set out in the 2013 Planning Obligations SPD.
- 3.4 The purposes of this Planning Obligations (Section 106) SPD are to:
- Ensure that the Council's guidance on planning obligations is up to date with current policy, guidance and practice;
 - Provide clarity for developers and members of the public by explaining what level and types of obligations are likely to be required from different sizes and types of development;
 - Detail the process for agreeing planning obligations and how this is integrated with the development management process;
 - Set out the justification for the level and nature of each obligation;
 - Provide clarity on the matters that are addressed through planning obligations and CIL.
- 3.5 The Planning Obligations SPD sets out the type and level of planning obligations required from different types and sizes of development. Planning obligations were tested through the viability assessments considered as part of the Islington CIL Examination in Public and are subject to site specific viability testing as a part of the application process. The SPD also sets out changes to the operation of planning obligations since the adoption of Islington's CIL.
- 3.6 The Islington CIL, which came into effect in 2014, provides funding for the development of the borough, and has replaced Section 106 as the primary mechanism available to the Council to secure contributions from developers for many types of infrastructure. However, even where CIL applies, Section 106 is still necessary to secure certain other types of financial contributions and other benefits, affordable housing, impact mitigation measures and in-kind provisions from developers. Since Islington adopted its CIL charging schedule, some of the previous Section 106 infrastructure requirements have been scaled back to those matters that are both directly related to the specific site, and will not be addressed by CIL.
- 3.7 It should be noted that the Government have commissioned a review of CIL from an industry led panel which is due to report shortly. It is anticipated that the panel will recommend significant changes to the operation of CIL and S106 obligations which may require changes to legislation if accepted by the Government and could impact on the level of infrastructure funding secured by the Council. The Council will monitor this and may need to update its guidance further, depending on changes introduced by the Government and if new legislation comes into effect.

Consultation

- 3.8 The statutory policies in Islington's Core Strategy, Development Management Policies and Finsbury Local Plan DPDs that this SPD supplements have undergone extensive public consultation and Examination in Public. The Core Strategy was adopted in 2011, and the other DPDs were adopted in 2013.
- 3.9 Internal consultation has been undertaken as part of the development of the SPD with relevant officers responsible for a variety of areas including planning policy, development management, traffic and engineering, learning, skills and employment, energy, environmental health, legal and other teams. These internal consultation responses have helped to inform the SPD. Additionally, the Council carried out external pre-consultation between 20 June and 1 July 2016.
- 3.10 Public consultation on the draft SPD was subsequently carried out in line with the statutory requirements set out in the relevant planning regulations. This consultation took place for an eight week period between 29 July and 23 September 2016. The responses received informed the final version of the SPD. Responses were received from 14 individuals and organisations including from residents, charities, statutory consultees, consultants and developers.
- 3.11 Respondents generally welcomed further guidance on the subject and thus supported the update of the SPD. Three responses came from the private sector (two from companies within the Berkeley Group, namely St William and Berkeley Homes North East London and one response from Tetlow King Planning on behalf of Rentplus). The remaining eleven responses came from statutory consultees and bodies such as Transport for London, residents and charities.
- 3.12 Comments and questions were received on the following subjects:
- Querying the coordination of funding of certain provisions (e.g. transport, greenspace etc) between CIL and planning obligations;
 - Querying the use of planning obligations versus planning conditions to require certain provisions;
 - Asking for more flexibility for developers to make provisions (e.g. for employment / training) through their own initiatives rather than through the Council / through planning obligations;
 - Questioning the necessity for certain obligations (e.g. small sites affordable housing obligation);
 - Asking for greater support of 'rent to buy' housing products;
 - Asking for consideration of different methods of determining obligations as per practice of other councils;
 - Asking for changes to the order or length of certain sections or for clarifications/ elaborations, for example relating to the relationship between S106 and CIL;
 - Support for the whole SPD or certain sections;

No respondents objected to the SPD in principal.

SPD revision and adoption:

- 3.13 The Council has carefully considered the comments received which are summarised in the Consultation Statement along with Council responses (Appendix 2). Where appropriate, the draft SPD has been revised to take account of issues raised. In summary, changes made to the SPD from its draft version comprise minor changes to formatting, ordering or length of certain explanatory sections as well as addition of detail, references and clarifications. Issues did not arise from the consultation that would warrant major changes to the content or requirements of the SPD.

4. Implications

Financial implications

- 4.1 The cost of preparing the Supplementary Planning Document is being met from the existing revenue budget of the Spatial Planning and Transport service, which sits within the Planning and Development division. Once in place, this Supplementary Planning Document will be used in determining all planning applications that are expected to enter into a Section 106 agreement. The greater clarity afforded by this

SPD is likely to generate financial resources for the Council. Allocation and expenditure of S106 funds will be carried out in accordance with planning regulations and the specific legal agreements signed by the Council and land owners /developers.

Legal Implications

- 4.2 This draft Supplementary Planning Document has been prepared in line with the relevant planning regulations. There are policy foundations for the SPD within the Core Strategy, Development Management Policies and Finsbury Local Plan DPDs (see above). The Town and Country Planning (Local Development) (England) Regulations 2012 require that the Council carries out public consultation before making a decision about adoption. Following consultation and adoption, the SPD will be a material consideration in the determination of future planning applications.

Environmental Implications

- 4.3 The policies on which this SPD is based have been subject to extensive Sustainability Appraisal at each stage of plan preparation. The Planning Obligations (Section 106) SPD has not been subject to Sustainability Appraisal because the SPD does not introduce new policies – it supports implementation of existing policies established within the Core Strategy, Development Management Policies DPD and Finsbury Local Plan DPD. These policies have been sufficiently appraised through the SAs carried out for the Core Strategy and the DM Policies DPD.
- 4.4 In addition, a screening exercise has been carried out which has determined that this SPD does not require a Strategic Environmental Assessment (SEA) in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004 and European Directive 2001/42/EC. This is because the Planning Obligations (Section 106) SPD will not result in any significant effects in addition to those already identified through the higher level sustainability appraisals discussed above.

Resident Impact Assessment

- 4.5 The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.
- 4.6 An equalities impact assessment (EqIA) was undertaken on each of the documents that form the basis for this SPD – the Core Strategy, the Development Management Policies DPD and the Finsbury Local Plan DPD. The Planning Obligations SPD itself has also been subject to a Resident Impact Assessment which has been updated following consultation.
- 4.7 The RIA indicated that there were no negative equality impacts for equalities target groups which will arise from the publication of the SPD. The SPD supports the Council's planning policies in ensuring that the maximum reasonable affordable housing is provided and will additionally ensure that other policy requirements and site-specific infrastructure are provided to support development, which are likely to cause indirect benefits to equalities target groups. However, direct positive impacts to specific groups are difficult to predict, prove or measure in this case.

5. Conclusion and reasons for the recommendations

- 5.1 The Planning Obligations SPD will update the Council's guidance on the implementation of policies relevant to planning obligations, and provide further detail on the procedure for agreeing planning obligations since the adoption of Islington's CIL Charging Schedule.

- 5.2 Executive are asked to note the summary of comments received during consultation, the Council's responses and proposed changes, and to agree to the adoption of the Planning Obligations (Section 106) SPD.

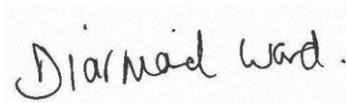
Appendices

- Appendix 1 –Planning Obligations (Section 106) SPD
- Appendix 2 – Consultation Statement on Planning Obligations (Section 106) SPD

Background papers:

- none

Signed by:



29.11.16

Executive Member for Housing and Development

Date

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